

On June 6, 2000 appellant, then a 45-year-old window clerk, filed a traumatic injury claim alleging that she was robbed while performing her work duties on June 3, 2000. OWCP

accepted her claim under No. xxxxxx297 for acute stress reaction on August 2, 2000. It authorized compensation benefits through September 1, 2000. On August 29, 2000 appellant's physician released her to return to light-duty work with no contact with the public. Appellant returned to work on June 15, 2001.

On September 17, 2001 appellant filed a second emotional condition claim, assigned OWCP File No. xxxxxx497, alleging that she developed an occupational disease as a result of employment factors. OWCP accepted her claim for dysthymic disorder with atypical features. On May 20, 2002 appellant's attending physician released her to return to work at the Clayton Station. OWCP combined all claims under Master File No. xxxxxx425.¹

Appellant's attending physician, Dr. Charles Ferris, a psychiatrist, noted that by April 29, 2007 appellant had returned to work. Appellant accepted a light-duty position on November 28, 2006 working at the employing establishment in the Sacramento facility as a modified mail processing clerk.

On March 31, 2008 the employing establishment stated that appellant had been off work for almost a year due to her father's death and that she must submit a note from her physician that she was not a threat to return to work.

On April 11, 2008 appellant filed a notice of recurrence of disability alleging that on February 8, 2008 she sustained a recurrence of disability in regard to her 2001 emotional condition claim and also filed a claim for wage-loss compensation from February 8 through April 11, 2008. On April 21, 2008 OWCP requested additional factual and medical evidence in support of her claimed recurrence.

On May 16, 2008 the employing establishment instructed appellant to return to work without further medical clearance at the Royal Oaks Facility rather than Sacramento. On May 20, 2008 it stated that she had not reported to work since May 2007 due to a death in her

¹ A portion of this case, under OWCP File No. xxxxxx497, has previously been before the Board on appeal. On January 10, 2002 appellant filed an occupational disease claim alleging that she developed an emotional condition due to stress in her federal employment. OWCP denied her claim on June 30, 2003. By decision dated August 26, 2003, the Board affirmed OWCP's denial of appellant's claim as she had not established discrimination, harassment or retaliation by her supervisor, Nancy Atkinson.

In a letter dated March 5, 2009, appellant's representative requested reconsideration of appellant's claim based on a September 16, 2005 decision of the Equal Employment Opportunity Commission (EEOC). The EEOC judge found based on a hearing conducted on December 14, 2004 that appellant was a qualified individual with a disability as she had developed post-traumatic stress disorder in 2000 when robbed at gunpoint at her employing establishment. The judge further found that Ms. Atkinson was not a credible witness and that she belittled appellant, yelled at her and retaliated against appellant. The EEOC judge ordered appellant reinstated with back pay in a location separate from Ms. Atkinson as well as monetary damages.

By decision dated March 8, 2011, the Board found that appellant had established clear evidence of error as the September 16, 2005 EEOC decision raised a substantial question as to the correctness of OWCP's decision. The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's March 8, 2011 decision, OWCP accepted appellant's January 10, 2002 emotional condition claim for dysthymic disorder on May 17, 2011.

family. The employing establishment noted that, since appellant had removed herself from work, she would be allowed to return without medical documentation. It further stated that Dr. Ferris was restricting appellant from returning to work at the Royal Oaks facility and that the employing establishment was attempting to return appellant to work at the Sacramento Plant.

By decision dated May 22, 2008, OWCP denied appellant's April 11, 2008 claim for recurrence and wage-loss compensation from February 8, 2008 and continuing.

Dr. Ferris completed a note on June 2, 2008 and stated that appellant could return to work with a single limitation that she not be assigned to the facility where she last worked. On June 6, 2008 the employing establishment offered appellant a modified mail processing clerk position at the Sacramento Processing and Distribution Center which complied with her restrictions of no monetary transactions with the public. On June 18, 2008 the employing establishment denied her request for light duty as it related to restrictions on standing. In a letter dated August 5, 2008, the employing establishment stated that there was no light-duty work available within appellant's restrictions at the Sacramento Processing and Distribution Center.

Dr. Janak Mehtani, a Board-certified psychiatrist, completed a note dated September 8, 2008 and stated that appellant could return to her usual work effective immediately in the Stockton area due to her medical condition and multiple medications. In a note dated September 15, 2008, he stated that she had an employment-related knee condition which interfered with her ability to perform the offered position. On November 6, 2008 Dr. Mehtani stated that he had restricted appellant from driving from Stockton to Sacramento. He stated that she was on a new medication regimen which made it difficult for appellant to drive more than 100 miles round trip every day from her home in Stockton to her work in Sacramento.

On March 14, 2009 appellant filed a claim for compensation requesting wage-loss compensation from September 21, 2007 through March 10, 2008 and a claim for recurrence of disability beginning on July 31, 2007 due to her 2001 employment injury. She stated that the employing establishment provided a position that failed to meet her work restrictions.

The Branch of Hearings and Review reversed the February 9, 2009 termination decision on September 25, 2009 remanding for development of the medical evidence and combining of the case records.

In a letter dated March 27, 2009, OWCP stated that appellant's March 15, 2009 recurrence claim had been addressed in the May 22, 2008 decision denying her prior recurrence claim. It stated that she left work in May 2007 due to a death in her family and that, when she requested to return to her job, the employing establishment could not accommodate her nonindustrial depression. OWCP stated that a nonindustrial depression was not an appropriate basis for a recurrence of disability claim.²

² OWCP proposed to terminate appellant's compensation and medical benefits by letter dated January 7, 2010. By decision dated February 18, 2010, it terminated appellant's compensation and medical benefits effective that date. Appellant's representative requested an oral hearing. In a decision dated September 27, 2010, the hearing representative reversed the February 18, 2010 decision and remanded for reinstatement of medical benefits.

In a letter dated October 7, 2010, appellant's representative discussed OWCP's recent reinstatement of medical benefits and requested wage-loss compensation for the same period. He stated that appellant stopped work in May 2007 due to depression related to the death in her family. Appellant's representative argued that appellant should not have been required to submit medical evidence when returning from personal or annual leave usage. He stated that the employing establishment admitted in its May 28, 2008 letter that it refused to provide appellant with work due to a perceived medical condition. Appellant's representative stated, "Technically, the agency withdrew the claimant's limited duty and continued to establish it had no limited duty to meet her medical restrictions." On April 22, 2011 he requested that OWCP reply to his October 7, 2010 letter noting that it was intended to be a request for reconsideration of appellant's claimed recurrence of disability. In a letter dated May 24, 2011, OWCP requested additional factual and medical evidence in support of appellant's claimed recurrence of disability. Appellant submitted a report dated June 9, 2011 from Dr. Mehtani noting that appellant was currently distressed due to her workers' compensation claim. Dr. Mehtani stated that this was an entirely separate incident involving a death in the family that appellant felt she needed private time to grieve. He noted that she attempted to return to work in September 2007 and was told that she needed to provide a work release note.

Appellant completed a statement on June 29, 2011 and noted that her grandfather died in May 2007 and that she utilized bereavement leave. The employing establishment requested that she provide a physician's release to return to work. Appellant stated that she became ill in October 2007 related to her 2003 claim. She stated that she felt that the employing establishment retaliated and discriminated against her. Appellant noted that the employing establishment allowed her to return to work in May 2008 and that she became ill again in September 2008. She stated that she was forced to retire in October 2009.

In a decision dated March 28, 2012, OWCP denied appellant's claim for recurrence of disability. It found that the employing establishment did not err or act abusively in requesting medical documentation for appellant's return to work in July 2007. OWCP found that the employing establishment provided appellant with a reasonable job offer on June 6, 2008 and appellant refused this offer based on nonindustrial bases.

Appellant requested an oral hearing before an OWCP hearing representative. On June 24, 2012 Dr. Mehtani stated that appellant was totally disabled and required medications. Appellant testified at the oral hearing on August 30, 2012 and submitted reports from Dr. Mehtani dated September 14 and October 25, 2012 which recommended therapy and medications.

By decision dated November 28, 2012, OWCP's hearing representative found that appellant had not established a recurrence of disability in 2007 due to her accepted emotional condition. She found that appellant left her employment for extended periods without any evidence of recurrent disability due to her accepted work factors. The hearing representative found that the contemporaneous medical evidence was quite clear that appellant had been staying away from work for multiple reasons of her own accord and that there was not a medical disability associated with her absences. She further found that there was no evidence that the employing establishment improperly requested medical evidence supporting appellant's ability

to return to work. The hearing representative concluded that appellant had not established a claimed recurrence or new work factors.

Appellant's representative requested reconsideration on February 27, 2013. He argued that the employing establishment committed error or abuse in requesting medical documentation from appellant and that the employing establishment technically withdrew appellant's limited duty. Appellant's representative argued that this withdrawal was a compensable factor of employment. He further argued that the employing establishment indicated that light duty was not available within appellant's physical limitations due to her nonemployment-related standing restriction. Appellant submitted a July 23, 2008 settlement agreement.

Dr. Mehtani completed notes on December 7, 2012, February 19 and April 9, 2013 stating that appellant was improving on new medication, but remained totally disabled.

In a decision dated May 2, 2013, OWCP declined to reopen appellant's claim for consideration of the merits. It stated that the underlying issue of appellant's representative's arguments was that appellant's light-duty job offer was withdrawn when she wanted to return from bereavement leave and that this issue had been discussed in prior decisions. OWCP denied a review of the merits.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention lacks validity.⁶

³ 5 U.S.C. §§ 8101-8193, 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

⁶ *M.E.*, 58 ECAB 694 (2007).

ANALYSIS

By decision dated November 28, 2012, OWCP reviewed the merits of appellant's claim and found that she had not established a recurrence of disability on or after September 21, 2007 causally related to her employment injuries.

As OWCP issued the November 28, 2012 decision more than 180 days before the filing of this appeal with the Board on June 1, 2013, the Board is precluded from considering the merits of the claim on appeal.⁷ The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) requiring OWCP to reopen the case for review of the merits of her claim. In her February 27, 2013 request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. Her representative attempted to advance a new and relevant legal argument. He, however, continued to argue that the employing establishment improperly required medical evidence to return appellant to work thereby effectively changing her light-duty job requirements so that appellant experienced a recurrence of disability. The Board finds that these arguments are repetitive. Appellant's representative has made these allegations and arguments continuously since October 7, 2010. OWCP has reviewed and addressed these arguments in prior decisions and these repetitive arguments do not provide a new basis for considering the merits of appellant's claim.⁸

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(3) as she submitted reports from Dr. Mehtani which were not relevant to her medical condition at the alleged time of recurrence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that, as appellant has not satisfied any of the criteria for warranting a merit review, OWCP properly declined to reopen her claim for consideration of the merits on May 2, 2013.

⁷ 20 C.F.R. § 501.3(e).

⁸ The Board has repeatedly held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. *D.K.*, 59 ECAB 141 (2007); *E.M.*, Docket No. 09-39 (issued March 3, 2009).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.⁹

Issued: June 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁹ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.